

106TH CONGRESS  
1ST SESSION

# S. 1447

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

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## IN THE SENATE OF THE UNITED STATES

JULY 28, 1999

Mr. WELLSTONE (for himself, Mr. KENNEDY, Mr. INOUE, Mr. DASCHLE, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Treatment:  
5 The Drug and Alcohol Addiction Recovery Act of 1999”.

1 **SEC. 2. PARITY IN SUBSTANCE ABUSE TREATMENT BENE-**  
2 **FITS.**

3 (a) GROUP HEALTH PLANS.—

4 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
5 MENTS.—

6 (A) IN GENERAL.—Subpart 2 of part A of  
7 title XXVII of the Public Health Service Act  
8 (42 U.S.C. 300gg–4 et seq.) is amended by  
9 adding at the end the following:

10 **“SEC. 2707. PARITY IN THE APPLICATION OF TREATMENT**  
11 **LIMITATIONS AND FINANCIAL REQUIRE-**  
12 **MENTS TO SUBSTANCE ABUSE TREATMENT**  
13 **BENEFITS.**

14 “(a) IN GENERAL.—In the case of a group health  
15 plan (or health insurance coverage offered in connection  
16 with such a plan) that provides both medical and surgical  
17 benefits and substance abuse treatment benefits, the plan  
18 or coverage shall not impose treatment limitations or fi-  
19 nancial requirements on the substance abuse treatment  
20 benefits unless similar limitations or requirements are im-  
21 posed for medical and surgical benefits.

22 “(b) CONSTRUCTION.—Nothing in this section shall  
23 be construed—

24 “(1) as requiring a group health plan (or health  
25 insurance coverage offered in connection with such a

1 plan) to provide any substance abuse treatment ben-  
 2 efits; or

3 “(2) to prevent a group health plan or a health  
 4 insurance issuer offering group health insurance cov-  
 5 erage from negotiating the level and type of reim-  
 6 bursement with a provider for care provided in ac-  
 7 cordance with this section.

8 “(c) SMALL EMPLOYER EXEMPTION.—

9 “(1) IN GENERAL.—This section shall not apply  
 10 to any group health plan (and group health insur-  
 11 ance coverage offered in connection with a group  
 12 health plan) for any plan year of a small employer.

13 “(2) SMALL EMPLOYER.—For purposes of  
 14 paragraph (1), the term ‘small employer’ means, in  
 15 connection with a group health plan with respect to  
 16 a calendar year and a plan year, an employer who  
 17 employed an average of at least 2 but not more than  
 18 25 employees on business days during the preceding  
 19 calendar year and who employs at least 2 employees  
 20 on the first day of the plan year.

21 “(3) APPLICATION OF CERTAIN RULES IN DE-  
 22 TERMINATION OF EMPLOYER SIZE.—For purposes of  
 23 this subsection:

24 “(A) APPLICATION OF AGGREGATION RULE  
 25 FOR EMPLOYERS.—Rules similar to the rules

1 under subsections (b), (c), (m), and (o) of sec-  
 2 tion 414 of the Internal Revenue Code of 1986  
 3 shall apply for purposes of treating persons as  
 4 a single employer.

5 “(B) EMPLOYERS NOT IN EXISTENCE IN  
 6 PRECEDING YEAR.—In the case of an employer  
 7 which was not in existence throughout the pre-  
 8 ceding calendar year, the determination of  
 9 whether such employer is a small employer shall  
 10 be based on the average number of employees  
 11 that it is reasonably expected such employer  
 12 will employ on business days in the current cal-  
 13 endar year.

14 “(C) PREDECESSORS.—Any reference in  
 15 this subsection to an employer shall include a  
 16 reference to any predecessor of such employer.

17 “(d) SEPARATE APPLICATION TO EACH OPTION OF-  
 18 FERED.—In the case of a group health plan that offers  
 19 a participant or beneficiary two or more benefit package  
 20 options under the plan, the requirements of this section  
 21 shall be applied separately with respect to each such op-  
 22 tion.

23 “(e) DEFINITIONS.—For purposes of this section—

24 “(1) TREATMENT LIMITATION.—The term  
 25 ‘treatment limitation’ means, with respect to benefits

1 under a group health plan or health insurance cov-  
2 erage, any day or visit limits imposed on coverage of  
3 benefits under the plan or coverage during a period  
4 of time.

5 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-  
6 nancial requirement’ means, with respect to benefits  
7 under a group health plan or health insurance cov-  
8 erage, any deductible, coinsurance, or cost-sharing  
9 or an annual or lifetime dollar limit imposed with re-  
10 spect to the benefits under the plan or coverage.

11 “(3) MEDICAL OR SURGICAL BENEFITS.—The  
12 term ‘medical or surgical benefits’ means benefits  
13 with respect to medical or surgical services, as de-  
14 fined under the terms of the plan or coverage (as the  
15 case may be), but does not include substance abuse  
16 treatment benefits.

17 “(4) SUBSTANCE ABUSE TREATMENT BENE-  
18 FITS.—The term ‘substance abuse treatment bene-  
19 fits’ means benefits with respect to substance abuse  
20 treatment services.

21 “(5) SUBSTANCE ABUSE TREATMENT SERV-  
22 ICES.—The term ‘substance abuse services’ means  
23 any of the following items and services provided for  
24 the treatment of substance abuse:

1           “(A) Inpatient treatment, including detoxi-  
2           fication.

3           “(B) Non-hospital residential treatment.

4           “(C) Outpatient treatment, including  
5           screening and assessment, medication manage-  
6           ment, individual, group, and family counseling,  
7           and relapse prevention.

8           “(D) Prevention services, including health  
9           education and individual and group counseling  
10          to encourage the reduction of risk factors for  
11          substance abuse.

12          “(6) SUBSTANCE ABUSE.—The term ‘substance  
13          abuse’ includes chemical dependency.

14          “(f) NOTICE.—A group health plan under this part  
15          shall comply with the notice requirement under section  
16          713(f) of the Employee Retirement Income Security Act  
17          of 1974 with respect to the requirements of this section  
18          as if such section applied to such plan.”.

19                 (B) CONFORMING AMENDMENT.—Section  
20          2723(c) of the Public Health Service Act (42  
21          U.S.C. 300gg–23(c)) is amended by striking  
22          “section 2704” and inserting “sections 2704  
23          and 2707”.

24          (2) ERISA AMENDMENTS.—

1 (A) IN GENERAL.—Subpart B of part 7 of  
 2 subtitle B of title I of the Employee Retirement  
 3 Income Security Act of 1974 (29 U.S.C. 1185  
 4 et seq.) is amended by adding at the end the  
 5 following:

6 **“SEC. 714. PARITY IN THE APPLICATION OF TREATMENT**  
 7 **LIMITATIONS AND FINANCIAL REQUIRE-**  
 8 **MENTS TO SUBSTANCE ABUSE TREATMENT**  
 9 **BENEFITS.**

10 “(a) IN GENERAL.—In the case of a group health  
 11 plan (or health insurance coverage offered in connection  
 12 with such a plan) that provides both medical and surgical  
 13 benefits and substance abuse treatment benefits, the plan  
 14 or coverage shall not impose treatment limitations or fi-  
 15 nancial requirements on the substance abuse treatment  
 16 benefits unless similar limitations or requirements are im-  
 17 posed for medical and surgical benefits.

18 “(b) CONSTRUCTION.—Nothing in this section shall  
 19 be construed—

20 “(1) as requiring a group health plan (or health  
 21 insurance coverage offered in connection with such a  
 22 plan) to provide any substance abuse treatment ben-  
 23 efits; or

24 “(2) to prevent a group health plan or a health  
 25 insurance issuer offering group health insurance cov-

1        erage from negotiating the level and type of reim-  
 2        bursement with a provider for care provided in ac-  
 3        cordance with this section.

4        “(c) SMALL EMPLOYER EXEMPTION.—

5            “(1) IN GENERAL.—This section shall not apply  
 6        to any group health plan (and group health insur-  
 7        ance coverage offered in connection with a group  
 8        health plan) for any plan year of a small employer.

9            “(2) SMALL EMPLOYER.—For purposes of  
 10       paragraph (1), the term ‘small employer’ means, in  
 11       connection with a group health plan with respect to  
 12       a calendar year and a plan year, an employer who  
 13       employed an average of at least 2 but not more than  
 14       25 employees on business days during the preceding  
 15       calendar year and who employs at least 2 employees  
 16       on the first day of the plan year.

17           “(3) APPLICATION OF CERTAIN RULES IN DE-  
 18       TERMINATION OF EMPLOYER SIZE.—For purposes of  
 19       this subsection:

20            “(A) APPLICATION OF AGGREGATION RULE  
 21       FOR EMPLOYERS.—Rules similar to the rules  
 22       under subsections (b), (c), (m), and (o) of sec-  
 23       tion 414 of the Internal Revenue Code of 1986  
 24       shall apply for purposes of treating persons as  
 25       a single employer.



1           “(B) EMPLOYERS NOT IN EXISTENCE IN  
 2           PRECEDING YEAR.—In the case of an employer  
 3           which was not in existence throughout the pre-  
 4           ceding calendar year, the determination of  
 5           whether such employer is a small employer shall  
 6           be based on the average number of employees  
 7           that it is reasonably expected such employer  
 8           will employ on business days in the current cal-  
 9           endar year.

10           “(C) PREDECESSORS.—Any reference in  
 11           this subsection to an employer shall include a  
 12           reference to any predecessor of such employer.

13           “(d) SEPARATE APPLICATION TO EACH OPTION OF-  
 14           FERED.—In the case of a group health plan that offers  
 15           a participant or beneficiary two or more benefit package  
 16           options under the plan, the requirements of this section  
 17           shall be applied separately with respect to each such op-  
 18           tion.

19           “(e) DEFINITIONS.—For purposes of this section—

20           “(1) TREATMENT LIMITATION.—The term  
 21           ‘treatment limitation’ means, with respect to benefits  
 22           under a group health plan or health insurance cov-  
 23           erage, any day or visit limits imposed on coverage of  
 24           benefits under the plan or coverage during a period  
 25           of time.

1           “(2) FINANCIAL REQUIREMENT.—The term ‘fi-  
 2           nancial requirement’ means, with respect to benefits  
 3           under a group health plan or health insurance cov-  
 4           erage, any deductible, coinsurance, or cost-sharing  
 5           or an annual or lifetime dollar limit imposed with re-  
 6           spect to the benefits under the plan or coverage.

7           “(3) MEDICAL OR SURGICAL BENEFITS.—The  
 8           term ‘medical or surgical benefits’ means benefits  
 9           with respect to medical or surgical services, as de-  
 10          fined under the terms of the plan or coverage (as the  
 11          case may be), but does not include substance abuse  
 12          treatment benefits.

13          “(4) SUBSTANCE ABUSE TREATMENT BENE-  
 14          FITS.—The term ‘substance abuse treatment bene-  
 15          fits’ means benefits with respect to substance abuse  
 16          treatment services.

17          “(5) SUBSTANCE ABUSE TREATMENT SERV-  
 18          ICES.—The term ‘substance abuse services’ means  
 19          any of the following items and services provided for  
 20          the treatment of substance abuse:

21                 “(A) Inpatient treatment, including detoxi-  
 22                 fication.

23                 “(B) Non-hospital residential treatment.

24                 “(C) Outpatient treatment, including  
 25                 screening and assessment, medication manage-

1           ment, individual, group, and family counseling,  
2           and relapse prevention.

3           “(D) Prevention services, including health  
4           education and individual and group counseling  
5           to encourage the reduction of risk factors for  
6           substance abuse.

7           “(6) SUBSTANCE ABUSE.—The term ‘substance  
8           abuse’ includes chemical dependency.

9           “(f) NOTICE UNDER GROUP HEALTH PLAN.—The  
10          imposition of the requirements of this section shall be  
11          treated as a material modification in the terms of the plan  
12          described in section 102(a)(1), for purposes of assuring  
13          notice of such requirements under the plan; except that  
14          the summary description required to be provided under the  
15          last sentence of section 104(b)(1) with respect to such  
16          modification shall be provided by not later than 60 days  
17          after the first day of the first plan year in which such  
18          requirements apply.”.

19                 (B) CONFORMING AMENDMENTS.—

20                 (i) Section 731(c) of the Employee  
21                 Retirement Income Security Act of 1974  
22                 (29 U.S.C. 1191(c)) is amended by strik-  
23                 ing “section 711” and inserting “sections  
24                 711 and 714”.

1 (ii) Section 732(a) of the Employee  
 2 Retirement Income Security Act of 1974  
 3 (29 U.S.C. 1191a(a)) is amended by strik-  
 4 ing “section 711” and inserting “sections  
 5 711 and 714”.

6 (iii) The table of contents in section 1  
 7 of the Employee Retirement Income Secu-  
 8 rity Act of 1974 is amended by inserting  
 9 after the item relating to section 713 the  
 10 following new item:

“Sec. 714. Parity in the application of treatment limitations and financial re-  
 quirements to substance abuse treatment benefits.”.

11 (3) INTERNAL REVENUE CODE AMEND-  
 12 MENTS.—

13 (A) IN GENERAL.—Subchapter B of chap-  
 14 ter 100 of the Internal Revenue Code of 1986  
 15 is amended by inserting after section 9812, the  
 16 following:

17 **“SEC. 9813. PARITY IN THE APPLICATION OF TREATMENT**  
 18 **LIMITATIONS AND FINANCIAL REQUIRE-**  
 19 **MENTS TO SUBSTANCE ABUSE TREATMENT**  
 20 **BENEFITS.**

21 “(a) IN GENERAL.—In the case of a group health  
 22 plan (or health insurance coverage offered in connection  
 23 with such a plan) that provides both medical and surgical  
 24 benefits and substance abuse treatment benefits, the plan

1 or coverage shall not impose treatment limitations or fi-  
 2 nancial requirements on the substance abuse treatment  
 3 benefits unless similar limitations or requirements are im-  
 4 posed for medical and surgical benefits.

5 “(b) CONSTRUCTION.—Nothing in this section shall  
 6 be construed—

7 “(1) as requiring a group health plan (or health  
 8 insurance coverage offered in connection with such a  
 9 plan) to provide any substance abuse treatment ben-  
 10 efits; or

11 “(2) to prevent a group health plan or a health  
 12 insurance issuer offering group health insurance cov-  
 13 erage from negotiating the level and type of reim-  
 14 bursement with a provider for care provided in ac-  
 15 cordance with this section.

16 “(c) SMALL EMPLOYER EXEMPTION.—

17 “(1) IN GENERAL.—This section shall not apply  
 18 to any group health plan (and group health insur-  
 19 ance coverage offered in connection with a group  
 20 health plan) for any plan year of a small employer.

21 “(2) SMALL EMPLOYER.—For purposes of  
 22 paragraph (1), the term ‘small employer’ means, in  
 23 connection with a group health plan with respect to  
 24 a calendar year and a plan year, an employer who  
 25 employed an average of at least 2 but not more than

1 25 employees on business days during the preceding  
2 calendar year and who employs at least 2 employees  
3 on the first day of the plan year.

4 “(3) APPLICATION OF CERTAIN RULES IN DE-  
5 TERMINATION OF EMPLOYER SIZE.—For purposes of  
6 this subsection:

7 “(A) APPLICATION OF AGGREGATION RULE  
8 FOR EMPLOYERS.—Rules similar to the rules  
9 under subsections (b), (c), (m), and (o) of sec-  
10 tion 414 of the Internal Revenue Code of 1986  
11 shall apply for purposes of treating persons as  
12 a single employer.

13 “(B) EMPLOYERS NOT IN EXISTENCE IN  
14 PRECEDING YEAR.—In the case of an employer  
15 which was not in existence throughout the pre-  
16 ceding calendar year, the determination of  
17 whether such employer is a small employer shall  
18 be based on the average number of employees  
19 that it is reasonably expected such employer  
20 will employ on business days in the current cal-  
21 endar year.

22 “(C) PREDECESSORS.—Any reference in  
23 this subsection to an employer shall include a  
24 reference to any predecessor of such employer.

1       “(d) SEPARATE APPLICATION TO EACH OPTION OF-  
 2       FERED.—In the case of a group health plan that offers  
 3       a participant or beneficiary two or more benefit package  
 4       options under the plan, the requirements of this section  
 5       shall be applied separately with respect to each such op-  
 6       tion.

7       “(e) DEFINITIONS.—For purposes of this section—

8               “(1) TREATMENT LIMITATION.—The term  
 9       ‘treatment limitation’ means, with respect to benefits  
 10       under a group health plan or health insurance cov-  
 11       erage, any day or visit limits imposed on coverage of  
 12       benefits under the plan or coverage during a period  
 13       of time.

14              “(2) FINANCIAL REQUIREMENT.—The term ‘fi-  
 15       nancial requirement’ means, with respect to benefits  
 16       under a group health plan or health insurance cov-  
 17       erage, any deductible, coinsurance, or cost-sharing  
 18       or an annual or lifetime dollar limit imposed with re-  
 19       spect to the benefits under the plan or coverage.

20              “(3) MEDICAL OR SURGICAL BENEFITS.—The  
 21       term ‘medical or surgical benefits’ means benefits  
 22       with respect to medical or surgical services, as de-  
 23       fined under the terms of the plan or coverage (as the  
 24       case may be), but does not include substance abuse  
 25       treatment benefits.

1           “(4) SUBSTANCE ABUSE TREATMENT BENE-  
 2           FITS.—The term ‘substance abuse treatment bene-  
 3           fits’ means benefits with respect to substance abuse  
 4           treatment services.

5           “(5) SUBSTANCE ABUSE TREATMENT SERV-  
 6           ICES.—The term ‘substance abuse services’ means  
 7           any of the following items and services provided for  
 8           the treatment of substance abuse:

9                   “(A) Inpatient treatment, including detoxi-  
 10                  fication.

11                  “(B) Non-hospital residential treatment.

12                  “(C) Outpatient treatment, including  
 13                  screening and assessment, medication manage-  
 14                  ment, individual, group, and family counseling,  
 15                  and relapse prevention.

16                  “(D) Prevention services, including health  
 17                  education and individual and group counseling  
 18                  to encourage the reduction of risk factors for  
 19                  substance abuse.

20           “(6) SUBSTANCE ABUSE.—The term ‘substance  
 21           abuse’ includes chemical dependency.”.

22           (B) CONFORMING AMENDMENT.—The  
 23           table of contents for chapter 100 of the Inter-  
 24           nal Revenue Code of 1986 is amended by in-



1           serting after the item relating to section 9812  
 2           the following new item:

“Sec. 9813. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.”.

3           (b) INDIVIDUAL HEALTH INSURANCE.—

4           (1) IN GENERAL.—Part B of title XXVII of the  
 5           Public Health Service Act (42 U.S.C. 300gg–41 et  
 6           seq.) is amended by inserting after section 2752 the  
 7           following:

8   **“SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT**  
 9                   **LIMITATIONS AND FINANCIAL REQUIRE-**  
 10                   **MENTS TO SUBSTANCE ABUSE BENEFITS.**

11       “(a) IN GENERAL.—The provisions of section 2707  
 12       (other than subsection (e)) shall apply to health insurance  
 13       coverage offered by a health insurance issuer in the indi-  
 14       vidual market in the same manner as it applies to health  
 15       insurance coverage offered by a health insurance issuer  
 16       in connection with a group health plan in the small or  
 17       large group market.

18       “(b) NOTICE.—A health insurance issuer under this  
 19       part shall comply with the notice requirement under sec-  
 20       tion 713(f) of the Employee Retirement Income Security  
 21       Act of 1974 with respect to the requirements referred to  
 22       in subsection (a) as if such section applied to such issuer  
 23       and such issuer were a group health plan.”.

1           (2) CONFORMING AMENDMENT.—Section  
 2       2762(b)(2) of the Public Health Service Act (42  
 3       U.S.C. 300gg–62(b)(2)) is amended by striking  
 4       “section 2751” and inserting “sections 2751 and  
 5       2753”.

6       (c) EFFECTIVE DATES.—

7           (1) IN GENERAL.—Subject to paragraph (3),  
 8       the amendments made by subsection (a) shall apply  
 9       with respect to group health plans for plan years be-  
 10      ginning on or after January 1, 2000.

11          (2) INDIVIDUAL MARKET.—The amendments  
 12      made by subsection (b) shall apply with respect to  
 13      health insurance coverage offered, sold, issued, re-  
 14      newed, in effect, or operated in the individual mar-  
 15      ket on or after January 1, 2000.

16          (3) COLLECTIVE BARGAINING AGREEMENTS.—  
 17      In the case of a group health plan maintained pur-  
 18      suant to 1 or more collective bargaining agreements  
 19      between employee representatives and 1 or more em-  
 20      ployers ratified before the date of enactment of this  
 21      Act, the amendments made subsection (a) shall not  
 22      apply to plan years beginning before the later of—

23           (A) the date on which the last collective  
 24      bargaining agreements relating to the plan ter-  
 25      minates (determined without regard to any ex-

1           tension thereof agreed to after the date of en-  
 2           actment of this Act), or

3                       (B) January 1, 2000.

4       For purposes of subparagraph (A), any plan amend-  
 5       ment made pursuant to a collective bargaining  
 6       agreement relating to the plan which amends the  
 7       plan solely to conform to any requirement added by  
 8       subsection (a) shall not be treated as a termination  
 9       of such collective bargaining agreement.

10       (d) COORDINATED REGULATIONS.—Section 104(1)  
 11       of Health Insurance Portability and Accountability Act of  
 12       1996 is amended by striking “this subtitle (and the  
 13       amendments made by this subtitle and section 401)” and  
 14       inserting “the provisions of part 7 of subtitle B of title  
 15       I of the Employee Retirement Income Security Act of  
 16       1974, and the provisions of parts A and C of title XXVII  
 17       of the Public Health Service Act, and chapter 1000 of the  
 18       Internal Revenue Code of 1986”.

19       **SEC. 3. PREEMPTION.**

20       Nothing in the amendments made by this Act shall  
 21       be construed to preempt any provision of State law that  
 22       provides protections to enrollees that are greater than the  
 23       protections provided under such amendments.

○